

Nurnberg, Germany,
12 January, 1946.

The President,
The White House,
Washington.

My dear Mr. President:

Since writing to you, I have received a letter from the Chief Justice, copy of which is enclosed, which indicates that the plan I have suggested to you is about what he expected; in fact, it is a little better than he expected. I thought you might like this for your information, and I suppose it should be regarded as confidential.

Sincerely yours,

ROBERT H. JACKSON.

*Copy for
filed -
Kavanaugh*

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D. C.

Chambers of
THE CHIEF JUSTICE

January 2, 1946.

Dear Jackson:

I duly received your letter undated, in reply to mine of November 11th, reporting your disappointment at the long recess over the holidays taken in the proceedings.

We here have not been troubled by too much recess over the holidays, and I found myself doing some work on both Christmas and New Year's day in order to keep up. At the moment all of my opinions are written, but I think there is no one else in the Court in that fortunate situation, although Douglas, as usual, is not very much behind and he has had on the whole rather heavier assignments than I have given to myself.

We are continuing to develop four-to-four votes in cases which will, for that reason, have to be reargued. I am announcing three such today. As a result of this and the rearrangements of cases which we heard last term, we are piling up quite a backlog which I think can be disposed of only by prolonging the term into late June or perhaps July. The extent will, of course, depend on when you are able to get back. I am not promising myself that you will be here much before June, if you are at that time.

I appreciate greatly your suggestion of a willingness to come over at some time for a short period. That, I think, ought to be avoided on your account, if not ours, and will not be necessary so long as we have enough cases to keep us busy without those which have to be reargued. I will keep you informed.

Mrs. Stone and I are giving a dinner to the Court Saturday night. We are expecting Mrs. Jackson and wish that you could join us too. We had originally planned the dinner for the 8th of December, but postponed it because of the death of Mrs. Hughes, of which you no doubt have heard.

Mutual friends tell me that you made a powerful speech at the opening of the trial at Nurnberg. I have sent for and have just received a copy. I shall be reading it soon.

With all good wishes for the New Year, in which Mrs. Stone and our colleagues join, I am,

Yours sincerely,

/s/ HARLAN F. STONE
HARLAN F. STONE.

Nurnberg, Germany,
10 January, 1946.

The President,
The White House,
Washington.

My dear Mr. President:

I have seen, as a result of the announcement by the Supreme Court that it is unable to decide four cases until I return, some criticism of your appointment of me to this task. The criticism has not been extensive nor serious, and the cases that are involved are not of great importance. At least two of them I am surprised the Court should have taken in the first place. But complaint might grow insistent if the Court continues to split and the cases involved should be more important.

I do not want this situation to become an embarrassment to you in any way. I plan to take care of my duty to the Court but want to submit to you whether there is any way of handling the situation that is preferable to you. This is the situation as it now appears to me:

Delays have been encountered greater than anyone expected. Also, I think the trial will last longer than I had hoped. The American and British cases-in-chief are about completed. My best estimate now is that the French will take three weeks and the Russians about the same. That runs the prosecution until close to the end of February. Then the defendants' case begins and its length will depend on how closely the Tribunal holds them to the real issues. But at best, 22 defendants probably will testify for themselves at least one day each and be cross-examined a half day each. This would bring us near to April 1st. They have asked for many witnesses. Some of them should not be allowed. But you can see that the trial will run on toward May or even June.

It seems important that I stay here until we pass the early part of the defense case. We must try to hold it to the real issues, stipulate facts not in dispute and not allow the case to get off into the complexities of European politics. The prosecutors all think that an American can do that better than they can for we are not under suspicion of trying to limit the issues to protect ourselves against some disclosure. They also think that the importance of our plea to limit would be minimized if we should not regard it as important enough for the Chief Counsel to argue. A good deal depends on the way the German contentions are first handled. But after two

or three weeks, we should get the questions settled so the procedure will fall into a pattern. Then I could be away a few weeks without injury to the case.

The most important thing from the Supreme Court point of view is that the 4-4 cases do not have to go over the term undecided. The last arguments are scheduled to be held following April 22nd. At that session all 4-4 cases developing during the term can be set down for hearing. I can attend the arguments and conference and the cases can then be decided. After that I can return here for the closing of the trial and the summation. There may be some time between closing and announcement of the decision, or questions may arise about sentences or their execution. Work on these matters largely will fall in vacation time, however, after the final session of the Court.

I think this case has considerable importance not only at home but in our foreign relations, and especially in the eyes of all small nations whose representatives are here following it closely. They feel that their future security will be greatly enhanced if we succeed in establishing penalties for wars of aggression. It seems to have met with pretty general approval so far. The disclosures in captured documents and from our few carefully chosen witnesses have impressed observers deeply. Despite some inconvenience to my brethren on the Bench, I think the United States must avoid any appearance of abandonment of this case or of waning interest in it. If someone could now be substituted for me without creating such an impression, I should be glad to do it. But I know it would be regarded by my colleagues here, by the small nations, by the Tribunal and by the correspondents here as desertion of an effort which the United States initiated and has been chiefly responsible for.

If you should think substitution advisable, or if any other plan impresses you as preferable, I know you will not hesitate to let me know. I think the plan I suggest will meet as well as possible the legitimate complaints and, of course, those based on hostile motives toward either you or me never can be satisfied.

Again I want to express appreciation of your cordial support. It means a lot when you are 3,500 miles from home, in the midst of a hostile society, doing a legal job with no precedents and a good many obstacles, and subject to many misunderstandings. I hope only that I may justify the confidence you have placed in me.

Respectfully yours,

ROBERT H. JACKSON,